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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/562,896	12/29/2005	Johannus Leopoldus Bakx	NL 030845	6920
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EXAMINER				
CHOW, LIXI				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary**Application No.**

10/562,896

Applicant(s)

BAKX, JOHANNUS LEOPOLDUS

Examiner

LIXI CHOW

Art Unit

2627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 October 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments, see Appeal Brief, filed 10/02/09, with respect to the rejection(s) of claim(s) 1-6 under Shoji et al. (US 2003/0063535) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Lee et al. (US 2003/0227846) in view of Hsiao (US 6,738,329).

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Specifically, claim 6 is a single means claim directed toward a recording device for recording information on a dual layer recordable disk. According to MPEP 2164.08(a), a single means claim is subject to an undue breadth rejection under 35 U.S.C 112, first paragraph. See *In re Hyatt*, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983).

4. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Namely, the above mentioned claim does not include any element/component that is/are necessary to record information to the optical disk. Therefore, it is not clear as to how the recording device record information to the optical storage disk.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al. (US 2003/0227846; hereafter Lee) in view of Hsiao (US 6,738,329).

Regarding claim 1:

Lee discloses a recording method for recording data stream on a dual layer recordable disk having a first layer and a second layer (see Fig. 1), the method comprising an act of performing an Optimum Power Control (OPC) procedure for determining an actual optimum writing power (see Fig. 2; test zone corresponds to OPC-area; and each layer includes two test zones), said Optimum Power Control procedure being performed in OPC-areas on the disk, at least one of the OPC-areas is positioned on the second layer and located relatively close to a radius where the data stream switches from the first layer to the second layer (see Fig. 1 and Fig. 2; OPC is being performed in the test zone in LI area on the second layer, located relatively close to a radius where the data stream switches from the first layer to the second layer).

Lee fails to disclose that the Optimum Power Control procedure is being performed in variably located OPC-areas on the disk that are variably located on the first layer and the second

layer; however, Hsiao discloses a recording method for recording information on a recordable disk, the method comprising a step of performing an Optimum Power Control procedure for determining an optimum writing power, said Optimum Power Control procedure being performed in variably located OPC-areas on the disk (see Figs. 3A-3B and col. 4, lines 31-58).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the method of Lee with the teaching of Hsiao to realize a method of performing OPC procedure in variably located OPC-areas that are variably located on each recording layer. One of ordinary skill in the art would have been motivated to do this because more desirable optimum writing power can be obtained for a particular location of the disk; hence high quality signal can be achieved.

Regarding claim 2:

Lee does not disclose a location of the at least one of the variably located OPC-area depends on the amount of information to be recorded on the disk; however, Hsiao discloses the recording method, wherein a location of the at least one of the variably located OPC-areas depends on the amount of information to be recorded on the disk (see col. 4, lines 54-58).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to modify the method of Lee, such that the location of the at least one of the variably located OPC-area depends on the amount of information to be recorded on the disk. One of ordinary skill in the art would have been motivated to do this because more desirable optimum writing power can be obtained for the corresponding recording data to be recorded on the disk.

Regarding claim 3:

Lee discloses the recording method, wherein an OPC area is located in the Middle Zone of the at least one of the layers of the dual layer disk (see Fig. 1; the LO and LI of layers 0 and 1 on the right side of the figure include OPC area, which is located in the Middle Zone).

As mentioned above, Lee does not disclose OPC area being variably located; however, Hsiao discloses the recording medium, wherein an OPC area of the variably located OPC-areas is located in the Middle Zone of the disk (see Fig. 3A or 3B; area 330c is located in the Middle Zone).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the teachings of Lee and Hsiao. The combination of Lee and Hsiao would have yielded a predictable result, since both Lee and Hsiao teaches an optical recording medium having plurality of OPC-areas located at different location through out the recording medium. One of ordinary skill in the art would have been motivated to do this because more desirable optimum writing power can be obtained for a recording medium having dual recording layers.

Regarding claim 4:

Lee disclose the recording method, comprising a further step of performing a further Optimum Power Control (OPC) procedure, said further Optimum Power Control procedure being performed in a further OPC-area located at a fixed position on at least one of the layers of the dual layer disk and reserved for use by the further Optimum Power Control procedure (see Fig. 1; LI of layer 0 on the left side of the figure includes an OPC-area located at a fixed position).

Regarding claim 5:

Lee discloses the recording method, wherein the further Optimum Power Control procedure is performed in a first fixed OPC-area located on the first layer and in a second fixed OPC-area located on the second layer (see Fig. 1 and Fig. 2; LI of layer 0 includes a first fixed OPC-area and LO of layer 1 includes a second fixed OPC-area).

Regarding claim 6:

Lee discloses a recording device for recording information on a dual layer recordable disk adopting for using the method according to claim 1 (see Fig. 6).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIXI CHOW whose telephone number is (571)272-7571. The examiner can normally be reached on Mon-Fri, 8:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wayne Young can be reached on 571-272-7582. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lixi Chow/
Examiner, Art Unit 2627

/Wayne Young/
Supervisory Patent Examiner, Art Unit 2627